

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| | | |
|---------------------------|---|-------------|
| TONY WADDLE MCMANUS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | 1:11CV103 |
| |) | 1:00CR189-2 |
| UNITED STATES OF AMERICA, |) | 1:00CR190-2 |
| |) | |
| Respondent. |) | |

ORDER

On September 10, 2015, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636. Petitioner filed objections [1:00CR189-2, Doc. #202; 1:00CR190-2, Doc. #214] to the Recommendation within the time limit prescribed by Section 636. The Court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation [1:00CR189-2, Doc. #198; 1:00CR190-2, Doc. #210], which is affirmed and adopted.

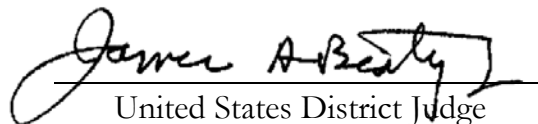
In the Objections, Petitioner attempts to assert a new claim based on the recent decision of the United States Supreme Court in Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015). However, Petitioner did not move to amend the § 2255 Motion in this case. Moreover, to the extent Petitioner seeks to raise new case law to challenge the remaining predicate convictions supporting the career offender determination in this case, Petitioner may not rely on "the applicability of case law that would not be available to others similarly situated," United States v. Pettiford, 612 F.3d 270, 278-79 (4th Cir. 2010), as further discussed in the Recommendation. Therefore, Petitioner's attempt to add a claim based on Johnson as part of

the Objections will be denied, but if Petitioner believes that he can establish a separate § 2255 claim based on Johnson, he may file a new § 2255 Motion raising that claim for further consideration by the Court.¹

IT IS THEREFORE ORDERED that Petitioner's Motion [1:00CR189-2, Doc. #196; 1:00CR190-2, Doc. #209] seeking to have the previously-entered stay removed and his Motion [1:00CR189-2, Doc. #191; 1:00CR190-2, Doc. #206] seeking to expand the record are GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss [1:00CR189-2, Doc. #152; 1:00CR190-2, Doc. #168] is GRANTED, that Petitioner's Motion [1:00CR189-2, Doc. #141; 1:00CR190-2, Doc. #155] to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 and Petitioner's Motion to Amend [1:00CR189-2, Doc. #188; 1:00CR190-2, Doc. #203] are DENIED, and this action is DISMISSED, and that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This, the 12th day of November, 2015.


United States District Judge

¹ Because Petitioner has previously pursued a § 2255 Petition in this Court (Case No. 1:02CV847, Judgment dated April 29, 2003), if he chooses to bring a Motion raising a claim under Johnson, he must first obtain authorization from the Court of Appeals for the Fourth Circuit, or otherwise address the requirements of § 2255(h) and § 2244.